IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 791 of 2005

WITH

CIVIL APPLICATION NO.932 of 2005

Kaveshwar Chandra Kapoor .. Appellant

versus

Brihanmumbai Muncipal Corporation .. Respondents

...

Mr.I. Prakash i/b C.K.Tripathi for the appellant.

Mr.K.A. Malandkar for the respondents

CORAM : B.H. MARLAPALLE,J

DATED : 5th September 2005

P.C.:

1. Heard Mr.Prakash, the learned counsel for the appellant.

2. By the impugned order dated 26th July 2005, the prayer for ad-interim relief has been refused. At the same time, Notice of Motion filed in L.C. Suit no.3035 of 2005 was directed to be registered and fixed for hearing on 9th August 2005.

3. The learned Judge of the City Civil Court has recorded in the impugned order that the plaintiff did not produce the map so as to show that the suit structure was in existence when he purchased the same. The notice dated 4th February 2005 issued u/s.351 of the Mumbai Municipal Corporation Act has alleged that there is unauthorised structure in the compulsory open space of the building by name "Ellora Building". The plaintiff may place on record map/plan copies in support of the pending Notice of Motion and in any case, the trial Court has rightly turned down the prayer for ad-interim relief so as to protect the structure which is in the compulsory open space.

4. The appeal is therefore disposed of by directing expeditious hearing of the pending Notice of Motion in L.C. Suit no.3035 of 2005 and it is made clear that there is no protection to the

structure covered by the notice dated 4th February 2005 but at the same time,, shop no.4 in Ellora Building need not be disturbed to the extent it is located within the building premises.

5. Civil Application does not survive.

B.H. MARLAPALLE, J